Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Rural Health Care Support Mechanism	)	WC Docket No. 02-60
	)	DA 12-1166

Comments of

Alaska Communications Systems Group, Inc.

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Comments Of Alaska Communications Systems Group, Inc.

Alaska Communications Systems Group, Inc., on behalf of its operating subsidiaries ("ACS"),[1] hereby submits these comments in response to the Public Notice ("Public Notice") issued by the Wireline Competition Bureau ("Bureau") in the above-captioned proceeding. In the Public Notice, the Bureau seeks further comment on the structure of a Broadband Services Program under consideration as part of the Commission's larger proceeding regarding reform of the Rural Health Care ("RHC") universal service support mechanism.

I. Introduction and Summary

The RHC primary universal service support mechanism, which supports telecommunications services for rural health care providers ("HCPs"), has brought tremendous benefits to Alaska. With affordable access to 21st century connectivity, a greater number of Alaskans than ever before have access to modern health care services, even in remote and sparsely populated reaches of the state. Absent this federal support, countless Alaska residents

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[1] In this proceeding Alaska Communications Systems Group, Inc. represents four local exchange carriers, ACS of Alaska, Inc., ACS of Anchorage, Inc., ACS of Fairbanks, Inc., and ACS of the Northland, Inc. (collectively, the "ACS ILECs"), as well as ACS Wireless, Inc., ACS Long Distance, Inc., ACS Internet, Inc., ACS Cable, Inc., Alaska Fiber Star, and WCI Cable (collectively, together with the ACS ILECS, "ACS"). The ACS companies provide retail and wholesale wireline and wireless telecommunications, information, broadband, and other services to residential and business customers in the State of Alaska and beyond, using ACS's intrastate and interstate facilities.

would lack access to specialized, and sometimes basic, health professionals and facilities. ACS is proud to provide these critically-needed services to its rural HCP customers around the state.

As a result, even as the Commission implements reforms that expand RHC support for broadband services, ACS urges the Commission to act in accord with one of the primary ethical precepts followed by the medical professionals medical the RHC support mechanism serves: "First, do no harm." Thus, the Commission should reaffirm its commitment fully to fund the existing, and statutorily mandated, primary RHC support mechanism for telecommunications services. Using that mechanism, service providers in Alaska today already deliver many of the telemedicine benefits offered by broadband using existing support.

As the Commission works to implement the recommendations in the National Broadband Plan to expand the RHC mechanism's support for broadband Internet access services, ACS offers the following further recommendations:

- Provide streamlined rules governing the formation and participation of consortia in the RHC program;
- Focus RHC support on a Broadband Services Program, reserving infrastructure funding, which is better provided through mechanisms with a broader focus, for extraordinary circumstances;
- Ensure that funding eligibility under the Broadband Services Program covers all components necessary to deliver broadband Internet access service;
- Provide funding, where necessary, for last-mile connections between the RHCP and the nearest central office or network node;
- Ensure that ineligible sites, applicants, or costs in a consortium application does not render the entire application ineligible; and
- Reform the current competitive bidding process to eliminate disincentives to long-term contracts and limit pricing for terrestrial services to reasonable levels.

In doing so, the Commission will ensure that the Broadband Services Program truly augments the benefits of RHC support available today.

II. Discussion

A. Participation of HCP Consortia

1. The Commission Should Permit Rural HCPs to Form Consortia before Starting the Bidding Process and File a Single Form 465 Service Request

In the *Public Notice*, the Bureau seeks comment on the rules that should govern the participation of rural HCP consortia in the Broadband Services Program.[2] ACS believes that the Commission should permit rural HCPs to form consortia before the form 465 is filed. In addition, the Commission should permit one lead filer to file on behalf of multiple sites, thereby streamlining the application process by permitting the consortium to issue a single, integrated service request, whether on Form 465 or in another format such as a Request for Proposals. By establishing the consortium before filing the service request, and permitting preparation and filing of a comprehensive service request, the Commission will enable service providers to evaluate the service locations comprehensively and offer the best network design and pricing. If being a member of a consortium were contingent on the competitively bid price, there would be no way for a vendor to know accurately what the total cost of the network would be.

Service requests should be kept general in their service descriptions, providing only the number of sites, locations, and the medical services the telecommunication services need to support. Rural HCPs may not fully understand all of the service options that may meet their needs, so it remains in their best interest NOT to specify a particular service in their service

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[2] *Public Notice* at ¶ 6a.

requests. Doing so could lead to suboptimal results in cases where a rural HCP seeks a particular service that may be "proprietary" to a single service provider, or result in higher costs or lower functionality than available alternatives.

Further, in response to the Bureau's question whether the rural HCP and service provider should be required to certify that RHC support will be used only for eligible purposes,[3] ACS urges the Commission not to impose such a requirement on the service provider. Once service to the rural HCP is established, the service provider has little control over its use, and should not be made liable for decisions of the rural HCP.

2. Site and Service Substitution Offer Appropriate Flexibility to Program Participants

In the Public Notice, the Bureau seeks comment on whether the Commission should adopt rules permitting site or service substitution in qualifying circumstances.[4] ACS supports this proposal. When new service types become available, rural HCPs should have an opportunity within the rules of the proposed Broadband Services Program to gain access to those services. Without service substitution rules, service providers will be reluctant to waive the necessary provisions of the rural HCP's existing contract if such action would create risk of losing the existing business during a new competitive bidding cycle. In addition, conducting such a bidding process during the funding year creates significant administrative costs for little benefit. For example, if terrestrial facilities become available where satellite service was formerly the only alternative available during a funding year, the rural HCP's chosen service provider should

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[3] *Public Notice* at ¶ 6a.

[4] *Public Notice* at ¶ 6c.

have the opportunity to migrate to the more reliable, lower cost terrestrial service without the administrative costs and business risks of a new competitive bidding process.

3. While Urban Sites Should Be Permitted within Consortia, They Should Not Receive Funding

In response to the Bureau's request in the Public Notice for comment on whether and how to include urban HCPs and sites in consortia,[5] ACS believes that urban HCPs and sites should not receive funding. The RHC program is intended to ensure that rural HCPs have access to affordable communications services necessary to deliver modern health care to rural residents at rates comparable to those available to their urban counterparts. Subsidizing services to urban HCPs would divert funds from more needy rural HCPs without serving the core focus of the RHC program on support for delivery of quality rural health care.

B. The Commission Should Continue Fully to Fund the Existing Primary RHC Telecommunications Support Mechanism

In 2010, in response to the Commission's *RHC Notice* seeking comment on reform of the RHC support mechanism to incorporate support for broadband,[6] ACS was cautiously supportive while urging the Commission to maintain full support for the primary RHC support mechanism for telecommunications services.[7] That mechanism ensures that rates for telecommunications services necessary to enable RHC providers to deliver modern health care services remain affordable and reasonably comparable to those available in urban areas of the same state, by

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5 *Public Notice* at ¶ 8a.

6 *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Notice of Proposed Rulemaking, FCC 10-125, 25 FCC Rcd 9371 (2010) ("*RHC Notice*").

7 *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Comments of Alaska Communications Systems (filed Sept. 8, 2010) ("ACS Comments").

supporting the difference between the "rural rate" and the "urban rate" for a given service, as defined under the Commission's rules.[8] This portion of the primary mechanism has been an unqualified success in Alaska, bringing vital high-speed connectivity to support telemedicine services to many remote areas of Alaska.

The primary RHC support mechanism for telecommunications services is also mandated under Section 254(h)(1)(A) of the Communications Act of 1934, as amended ("Communications Act").[9] That statute requires telecommunications carriers, upon bona fide request, to provide telecommunications services that are necessary for the provision of health care services to certain RHC providers. Ensuring that the rates for these services remain reasonably comparable to those in urban areas, the statute further provides for such carriers to receive support from the RHC support mechanism to cover the difference between the applicable urban and rural rates.

This primary RHC support mechanism for telecommunications services has become truly essential to the delivery of modern health care in Alaska. With some 572,000 square miles of land and only three population centers (Anchorage, Fairbanks, and Juneau), Alaska has hundreds of thousands of residents scattered in small villages, bush communities, and other isolated

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[8] *See* 47 C.F.R. §§ 54.605-54.609.

[9] 47 U.S.C. §254(h)(1)(A) ("A telecommunications carrier shall, upon receiving a bona fide request, provide telecommunications services which are necessary for the provision of health care services in a State, including instruction relating to such services, to any public or nonprofit health care provider that serves persons who reside in rural areas in that State at rates that are reasonably comparable to rates charged for similar services in urban areas in that State. A telecommunications carrier providing service under this paragraph shall be entitled to have an amount equal to the difference, if any, between the rates for services provided to health care providers for rural areas in a State and the rates for similar services provided to other customers in comparable rural areas in that State treated as a service obligation as a part of its obligation to participate in the mechanisms to preserve and advance universal service.")

settlements across the state. Alaska Natives comprise roughly 20 percent of Alaska's population, and ACS itself serves some 50 Native communities throughout the state. Access to health care is particularly difficult for Alaska Natives in these small villages and bush communities.

In many cases, RHC providers gather in regional clusters, and supported telecommunications services provide essential links to specialized resources available in larger cities. Even then, access to health care is far from straightforward. Patients must often travel by boat, airplane, or snowmobile to reach these locations and telecommunications carriers must deliver service via satellite. Terrestrial microwave or fiber optic facilities are nonexistent and would be costly to build and maintain across mountain ranges, deep valleys, and through permafrost, all during Alaska's short construction season.

For these reasons, Alaska depends more than any other state on the RHC primary support mechanism for telecommunications services to deliver modern health care to its residents. Cloud computing, Multi-Protocol Label Switching ("MPLS"), and other services already supported under the RHC primary support mechanism play a well-established and successful role in delivering health care services to remote rural locations in Alaska, and that role remains critical today. ACS therefore urges the Commission to reaffirm its commitment to the RHC primary support mechanism for telecommunications services, even as it examines reforms that would expand support for broadband. Broadband Internet access services, while beneficial in their own right, are not a substitute for these critical telecommunications links.

C. ACS Supports Reform of the Commission's Rural Health Care Internet Access Fund to Expand Support for Broadband Internet Access Services

The *Public Notice* seeks further comment on the Commission's proposal in the 2010 *RHC Notice* to replace the existing RHC Internet Access Fund with a Health Care Broadband

Services Program to support the monthly recurring costs of broadband services for rural HCPs.[10] While ACS generally supports this change, the Commission should implement this change in ways that ensure that it offers the greatest benefits to rural HCPs, as discussed below.

1. Support for Broadband Services Aligns Better with the Goals of RHC Support than Does Support for Infrastructure Deployment

Observing that many participants in the Pilot Program chose to lease services rather than to construct and own their own facilities, the *Public Notice* asks "whether it would be appropriate under the proposed Broadband Services Program, if adopted, to provide funding to recipients to construct and own network facilities under limited circumstances," such as in order to self-provision last mile connectivity from a commercial service provider.[11]

ACS supports the focus of the *Public Notice* on efforts to expand support for broadband under the RHC program for broadband services, rather than infrastructure. Funding for construction of broadband infrastructure under the RHC Program should be available, if at all, to service providers, rather than to rural HCPs themselves.

As the Bureau's recent analysis has demonstrated, when given the choice under the RHC Pilot Program, rural HCPs themselves overwhelmingly chose to purchase broadband services, rather than to construct and operate broadband network facilities.[12] As the *Public Notice* itself recognizes, rural HCPs found that constructing and owning networks was a burdensome

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[10] *Public Notice* at ¶ 2.

[11] *Public Notice* at ¶ 10c.

[12] *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Wireline Competition Bureau Evaluation of Rural Health Care Pilot Program Staff Report, DA 12-1332 (rel. Aug. 13, 2012), at ¶ 47 (indicating that only eight participants in the Pilot Program used support for construction; only two constructed entire networks; and some 80 percent of funding commitments were attributable to purchased services rather than construction of facilities).

undertaking outside their core competencies, and most would prefer to defer to service providers that have experience and expertise in such matters.[13] Indeed, independent observers as well have concluded that, "[h]istory has shown that running a telecom network is a highly capital-intensive and complicated business much better left to private enterprise."[14]

Moreover, broadband infrastructure is most efficiently built on a scale to support service to entire communities, rather than individual users, and is thus more appropriately provide through federal broadband grant programs or even the Commission's high cost support mechanisms. Federal broadband infrastructure grant programs have a well-established and developed set of rules governing grant administration, eligible costs, performance and financial monitoring, and auditing to protect the interests of the federal government and American taxpayers that do not apply to support payments collected and distributed by USAC.[15] In addition, support for basic broadband infrastructure provided though programs with a narrow focus on particular classes of users, such as the RHC support mechanism, inevitably leads to difficult questions about how to allocate costs and manage use by customers outside the class. In the alternative, construction of facilities to provide only the capacity required by a rural HCP would be exceedingly costly and inefficient over the long transport distances necessary in Alaska.

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[13] *Public Notice* at ¶ 9 n. 32.

[14] Randolph J. May, "A Dystopian UTOPIA," Free State Foundation (Aug. 17, 2012), available at: http://freestatefoundation.blogspot.com/2012/08/a-dystopian-utopia.html (visited Aug. 21, 2012).

[15] *See, e.g.,* 2 C.F.R. Part 215 (Uniform Administrative Requirements for Grants and Agreements With Institutions Of Higher Education, Hospitals, Other Non-Profit, And Commercial Organizations, OMB Circular A-110); 2 C.F.R. Parts 220, 225, 230 (Cost Principles); OMB Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations).

ACS agrees that, cases where last mile facilities are unavailable, the Broadband Services Program should provide funding to the rural HCP's chosen service provider for conditioning or installing last-mile infrastructure needed to connect a rural HCP to the nearest central office or network node for the delivery of broadband services. Such funding should be available in a lump-sum, up-front payment in a manner akin to payment of ILEC special construction charges. Although costly, in many cases, construction of such facilities would be cost effective for the Broadband Services Program in Alaska, for example where the combined cost of such construction and terrestrial broadband is less expensive than the equivalent satellite service over the term of a multi-year contract. Rural HCPs could evaluate the relative cost effectiveness of each option in the course of reviewing bids received in response to posted service requests.

2. The Broadband Services Program Should Encompass Eligibility for All Components Necessary to Deliver Broadband Service

a) The Commission Should Clarify the Scope of the Broadband Services Program, but Should Not Limit Support Only to "Point-to-Point" Connectivity

ACS appreciates the request in the *Public Notice* for further comment on the language in the Commission's *RHC Notice* proposing to limit support under the Broadband Services Program to "point-to-point" connectivity.[16] In its initial comments, ACS highlighted the confusion and unintended consequences this language could produce, explaining that:

> New technologies such as cloud computing and MPLS should be eligible for support, as they are now in the telecommunications program. Cloud computing networks provide the functions that RHC providers need with many added benefits over legacy point-to-point service delivery. Modern, IP-based cloud computing networks offer features required by health care providers such as end-to-end class of service and the ability to prioritize important data such as x-rays.

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[16] *Public Notice* at ¶ 10a.

> Modern cloud computing also offers enhanced security because data need not travel across the public Internet. Cloud computing also offers lower maintenance costs due to fewer point-to-point connections. New services and additional bandwidth can be added to the network by simply changing software configurations.[17]

ACS continues to believe that the Commission should eliminate this reference to "point-to-point" services, in order to give full effect to the determination in the *RHC Notice* not to "restrict[] the type of technology participants may use."[18] Indeed, "point-to-point" is a particularly inapt description of broadband Internet access services, which by their very nature may transmit and receive content from numerous points worldwide.

In response to the Commission's question, therefore, whether the definition of services to be funded under the Broadband Services Program should omit the phrase, "point-to-point," ACS answers in the affirmative. ACS believes that, in order to "future-proof" the definition, there is no need to enumerate specific types of connectivity that would be eligible for support, but that a description of the general functionality to be supported would be sufficient.

More fundamentally, however, ACS believes that the Commission should clearly delineate the boundaries between support under the existing primary mechanism for telecommunications services and the proposed Broadband Services Program, for instance through functionality criteria, or else clearly indicate areas of overlap between the mechanisms where the rural HCP may properly seek funding under differing elements of the larger RHC mechanism. For example, the *RHC Notice* proposes that the Broadband Services Program would support "50 percent of an eligible rural health care provider's recurring monthly costs for any

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[17] ACS Comments at 8-9.

[18] *RHC Notice* at ¶ 50.

advanced telecommunications and information services that provide point-to-point broadband connectivity, including Dedicated Internet Access."[19] The recent *Public Notice* expands on this discussion, observing that, "[h]ealth care networks and other enterprise customers use a wide variety of connectivity solutions which allow a variety of topologies (ring, mesh, hub-and-spoke, line, etc.) and technologies (MetroE, MPLS, Virtual Private Network, etc.) to meet their requirements,"[20] and identifies a series of health IT requirements that could be met with broadband services.[21] Even putting aside the "point-to-point" issue, at least some of these topologies, technologies and services are already supported under the Commission's existing primary mechanism for telecommunications services, which provides funding based on the difference between urban and rural rates, not a flat 50 percent discount. In order to avoid sowing confusion, the Commission should clarify the relationship between these two mechanisms in a way that does not curtail the scope of the existing primary mechanism for telecommunications services.

b) The Commission Should Provide Limited Support for Nonrecurring Costs

With respect to nonrecurring costs of broadband services, the Bureau reiterates the proposal in the *RHC Notice* to provide "one-time support for 50 percent of reasonable and customary installation charges for broadband access and to provide support for the cost of leases of lit or dark fiber," and seeks comment on whether its support for such nonrecurring charges

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19 *RHC Notice* at ¶ 93.

20 *Public Notice* at ¶ 10a.

21 *Public Notice* at ¶ 12 (citing categories of service needs including telemedicine, adoption of electronic health records, access to other telehealth applications, and service quality requirements).

should include "equipment to enable the formation of networks among consortium members, similar to the Pilot Program."[22]

While ACS agrees that support to help defray installation charges for broadband access and leased services would help keep broadband services affordable for rural HCPs, ACS continues to urge the Commission to limit its support for equipment. In its initial Comments in response to the *RHC Notice*, ACS agreed that the Commission should provide support for network design, equipment, and inside wiring costs, as those costs are part of the initial hardware and installation costs that a rural HCP must incur to take advantage of the support the program offers.[23] In order to conserve funds, however, ACS urged the Commission to provide such support on a "Priority Two" basis, similar to the way in which such support is distributed under the schools and libraries universal service support mechanism, and only in the areas with the greatest need.[24]

c) Inclusion of Ineligible Sites or Applicants in Rural HCP Consortia Should not Render the Entire Consortium Ineligible

In the *Public Notice*, the Bureau seeks comment on whether it should adopt rules within to govern the participation of ineligible HCP sites in consortia that receive RHC support from the proposed Broadband Services Program.[25] In doing so, the Bureau cited the example of the Commission's rule permitting Pilot Program participants to share excess network capacity with

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22 *Public Notice* at ¶ 10b.

23 ACS Comments at 12-13.

24 *Id.*

25 *Public Notice* at ¶ 10d.

an ineligible entity, so long as that entity paid its "fair share" of network costs attributable to the portion of the network capacity used.[26]

ACS believes that there is little need for specific rules to govern the use of excess network capacity purchased by rural HCP applicants to the proposed Broadband Services Program. It is unlikely that a rural HCP would purchase excess capacity since, unlike in the context of network construction, the rural HCP or HCP consortium would be purchasing services in a capacity that is sufficient, but not excessive, to meet its own needs.

With respect to the costs of service to be provided to an ineligible HCP, ACS believes that it is likewise unnecessary to adopt a version of the "fair share" rule. In many cases, the cost of services provided to a particular HCP will be specifically identifiable as such, and may be excluded from the consortium's calculated support.

With respect to services that are shared among consortium members, the members should have flexibility to allocate costs in a reasonable manner, for example using a version of the cost allocation rule applicable to ineligible services under the schools and libraries universal service support mechanism. Those rules permit applicants flexibility to adopt an appropriate cost allocation method that meets two conditions, specifically that it must (1) have a "tangible basis," and (2) the eligible portion must be the most cost-effective means of receiving the eligible service.[27] Such a rule provides flexibility moving forward for consortium members to identify

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[26] *Id.*

[27] *See* 47 C.F.R. § 54.504(e)(1) ("*Ineligible components*. If a product or service contains ineligible components, costs must be allocated to the extent that a clear delineation can be made between the eligible and ineligible components. The delineation must have a tangible basis, and the price for the eligible portion must be the most cost-effective means of receiving the eligible service.").

reasonable cost allocation methods in light of evolving network technologies, topologies, and pricing structures.

D. The Commission Should Reform and Clarify Its Competitive Bidding Process

1. The Commission Should Eliminate Disincentives to Long-Term Contracts

The *Public Notice* seeks comment on what specific requirements should be in place for competitive bidding under the Broadband Services Program.[28] ACS agrees that the competitive bidding process is important, and should be designed to ensure, to the greatest degree possible, that rural HCP applicants are in a position to request and select services that represent the best value to their respective organizations.

In these comments, ACS would like to call the Commission's attention to two important clarifications that should be incorporated, not only into the Broadband Services Program rules, but also into the rules governing the primary RHC support mechanism for telecommunications services. Taken together, these changes will eliminate USAC policies that create significant business risks associated with multi-year contracts. Such multi-year contracts can benefit the program by reducing both administrative costs and monthly recurring costs of service, yet the USAC policies below create significant disincentives to their use.

First, the Commission should clarify that, once approved, RHC support should remain stable for the duration of the contract. Under the Commission's proposal for support under the Broadband Services Program, which would support 50 percent of the cost of service over the life of the contract, this would appear likely to be the case. But, under the interpretation of the

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[28] *Public Notice* at ¶ 11a.

Commission's rules applied by USAC, applicants and service providers participating in the primary RHC support mechanism for telecommunications services face much greater uncertainty. ACS has recently learned that, even in the case of a multi-year contract that has evergreen status, support can vary based on unilateral USAC decisions as to the level of the "urban" and "rural" rate, as defined in the Commission's rules. For example, a rural HCP may obtain support for telecommunications services delivered to its rural location via satellite based on the difference between the terrestrial urban rate and the satellite rate for equivalent service, if such satellite service is the only connectivity option available to its rural location.[29] But, ACS has recently been informed that, if a terrestrial alternative becomes available to that rural location part way through the initial term of a multi-year contract for satellite service, USAC will abruptly terminate funding for the satellite service, instead applying the Commission's rule capping support at the much lower rate the rural HCP would have received had it purchased the terrestrial alternative.[30] While ACS understands and supports the intent of this rule in cases where the rural HCP makes the conscious choice to purchase satellite-based services despite terrestrial alternatives, the Commission should clarify that this rule applies only to determine support levels at the start of the contract term. Terrestrial alternatives that become available only after the contract is signed should not become the basis on which to reduce support. To find otherwise would upset the settled expectations of the parties, create significant disincentives to

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[29] *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 03-288, 18 FCC Rcd 24546 ¶ 42 (2003) ("Rural health care providers that are located in areas with no terrestrial-based alternative may compare rural satellite rates to urban wireline rates, which results in support for such providers.").

[30] *See* 47 C.F.R. § 54.609(d).

multi-year term contracts, and create the risk of financially ruinous liabilities for the rural HCP and service provider alike, which in many cases will be obligated to continue payments on a contract for wholesale satellite service with its underlying provider. Rural HCPs and service providers alike need predictability and certainty in order to enter into beneficial multi-year term contracts, which, as discussed above, can lower administrative costs and monthly recurring charges for service. The Commission's rules should provide an environment conducive to such multi-year arrangements.

Second, in response to the Bureau's request for comment on the process for designating "evergreen" contracts, ACS believe that the Commission should abolish this confusing and opaque process, both for the existing primary RHC program and the proposed Broadband Services Program.[31] The USAC review process is ill-defined, and primarily represents a trap for unwary rural HCPs and service providers alike. As explained by USAC, "[a] contract is considered 'evergreen' when it includes more than one Fund Year and is endorsed as 'evergreen' by USAC. Evergreen contract status is not required, but it benefits health care providers. With an evergreen contract, the health care provider (HCP) does not need to file the FCC Form 465 or participate in competitive bidding for the life of the contract (or until the contract is modified). Multi-year contracts without evergreen status still must file the FCC Form 465 and participate in competitive bidding each year."[32]

This USAC programmatic requirement finds no basis in the Commission's rules or orders. Moreover, it addresses no apparent programmatic need. Once the parties enter into a

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[31] *Public Notice* at ¶ 11c.

[32] *See* http://www.usac.org/rhc/health-care-providers/evergreen-contracts.aspx (visited August 21, 2012).

multi-year contract and the funding request undergoes review by the RHC Division staff, the rural HCP should be relieved of the obligation to file a Form 465 for the duration of the contract term. By requiring a rural HCP that is already a party to a multi-year contract to issue Form 465 service requests each year, this USAC policy add administrative costs for the rural HCP, which must issue the request and handle any service provider bids it receives. Moreover, despite the requirement to file a Form 465 service request every year, a rural HCP that is already under a multi-year service contract would likely face prohibitively high termination costs were it actually to seek a change to a different provider before the end of its contract term. By eliminating the requirement that a rural HCP file a Form 465 service request even when it is under a multi-year contract, the Commission will reduce transaction costs by allowing applicants and service providers to focus efforts on service requests that are truly contestable, leading to increased competitive activity. Indeed, such a rule is already functioning under the Schools and Libraries Universal Service Support Mechanism.[33]

2. The Commission Should Limit Pricing for Terrestrial Services to Reasonable Levels

As indicated in ACS's initial comments, any service provider receiving RHC support for services delivered using facilities constructed with federal grant or loan support should be required to pass the resulting savings in its capital network costs along to its customers and the RHC Program.[34] In particular, recipients of awards under the Broadband Technology Opportunities Program ("BTOP") and Broadband Initiatives Program ("BIP"), each funded with

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[33] *See* http://www.usac.org/sl/applicants/step03/contracts.aspx (discussing multi-year contracts and contracts with voluntary extension periods).

[34] ACS Comments at 11.

taxpayer dollars under the American Recovery and Reinvestment Act of 2009 ("Recovery Act"),[35] should be required to offer service over these facilities at not more than the terrestrial urban rate for comparable services. As ACS indicated in its earlier comments, such a rule will encourage maximum use of these federally subsidized facilities and relieve funding pressure on the RHC program, an especially important goal in light of the Commission's proposed expansion of broadband support. Moreover, doing so will avoid the potential for duplicative funding, as excessive rates for service would appear merely to create a windfall for shareholders of the award recipient by defraying previously funded construction costs.

In addition, to facilitate competition, the Commission should make clear that service providers that receive RHC support, and that own or control such federally-funded facilities that represent the only terrestrial alternative available to reach a rural HCP, must offer wholesale capacity on those facilities at rates equal to those they impute to themselves when bidding for supported services.

In particular, ACS is particularly dismayed at the pricing policies adopted by General Communication Inc. ("GCI") for transport services on its TERRA-SW fiber optic and microwave transport facilities. Despite the fact that GCI constructed these facilities with federal grant funding and loan guarantees awarded under BIP, administered by the Rural Utilities Service, GCI continues to insist on excessively high rates for transport using these facilities that are equivalent to rates for satellite-delivered services. While GCI has recently claimed that, "anchor tenants participating in the [RHC] and E-Rate programs are essential to the ability to

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[35] Public Law 111–5, 123 Stat. 115 (2009).

repay the private capital and RUS loans filing,"[36] GCI fails to explain why, even after receiving some $88 million in federal support for the capital investment required, it must use satellite services as a price umbrella for its terrestrial transport when offering service either to potential competing providers or, ACS understands, rural HCPs that will have the bulk of the cost defrayed by RHC support.

III. Conclusion

For the foregoing reasons, ACS urges the Commission to reassert its full commitment to the primary RHC support mechanism for telecommunications services, and adopt a Broadband Services Program in accord with ACS's recommendations herein.

Respectfully submitted,

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[36] *Connect America Fund*, WC Docket No. 10-90, Letter from Tina Pidgeon, General Counsel & Senior VP, Government Affairs, GCI, to Marlene H. Dortch, Secretary, FCC (filed Aug. 16, 2012), at 2.